

such decision and the record be submitted to the Board for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (a) of this section. The Board shall then make the decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the administrative law judge.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

§ 4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in § 4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision on the merits has the right to appeal to the Board under the procedures in this part.

[68 FR 68771, Dec. 10, 2003]

§ 4.479 Effectiveness of decision during appeal.

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation,

a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the BLM decision inoperative under subpart 4160 of this title.

[68 FR 68771, Dec. 10, 2003]

§ 4.480 Conditions of decision action.

(a) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative, and substantial evidence. The

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transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of part 4100 of this title.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 48 FR 17596, Apr. 25, 1983, unless otherwise noted.

GENERAL PROVISIONS

§ 4.601 Purpose of these rules.

These rules are adopted by the Department of the Interior pursuant to section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. 96-481. Under the Act, an eligible party may receive an award for attorney fees and other expenses when it prevails over the Department in an adversary adjudication under 5 U.S.C. 554 before the Office of Hearings and Appeals, unless the Department's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against the Department.

§ 4.602 Definitions.

As used in this part:

(a) *The Act* means section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. 96-481.

(b) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate

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or for the purpose of granting or renewing a license.

(c) *Adjudicative officer* means the official who presided at the adversary adjudication.

(d) *Department* refers to the Department of the Interior or the relevant department component which is a party to the adversary adjudication (e.g., Office of Surface Mining Reclamation and Enforcement or Bureau of Land Management).

(e) *Proceeding* means an adversary adjudication as defined in § 4.602(b).

(f) *Party* includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

§ 4.603 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by the Secretary under 5 U.S.C. 554. Specifically, these rules apply to adjudications conducted by the Office of Hearings and Appeals under 5 U.S.C. 554 which are required by statute to be determined on the record after opportunity for an agency hearing. These rules do not apply where adjudications on the record are not required by statute even though hearings are conducted using procedures comparable to those set forth in 5 U.S.C. 554.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered matters.

§ 4.604 Applicability to Department of the Interior proceedings.

The Act applies to any adversary adjudication pending before the Office of Hearings and Appeals of the Department of the Interior at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Departmental action has not been taken before that date, and proceedings pending on September 30, 1984.